fact situations. Events leading up to the transaction and subsequent thereto are all important in deciding cases of this type. Under the circumstances presented in the principal case it does not seem unreasonable to say that a day or two is sufficient period of possession in the vendee so as to give "notice to the world."

Had the facts of this case arisen a few months later the result would have been determined by the Certificate of Title law which did not become effective until January 1, 1939.[11] However, since that law is applicable only to motor vehicles the question is still open where the sale of other chattels is involved. While the case is weak and indecisive on some points, it would seem that the interpretation given in the principal case of Section 25 of the Sales Act is correct.

G. O. A.

STATUTORY INTERPRETATION

Statutory Tort Liability under Motor Vehicle Laws—Equivocal Language in Relation to Public Corporations

Plaintiff, as administrator, brought an action against a board of county commissioners for the death of his decedent. Death resulted from the negligent operation of a motor truck by an employee of the defendant while driving the truck to its final destination from the place of technical delivery. Jury trial resulted in a verdict for plaintiff, but the court entered judgment *non obstante verdicto.* On appeal *held,* reversed, liability being predicated upon the Michigan Motor Vehicle Statute [1] which makes the owners of "motor vehicles" liable for injuries occasioned by their negligent operation. *Miller* v. *County Bd. of Road Comm'rs,* 297 Mich. 487, 298 N. W. 105 (1941).

Defendant's immunity was conceded under the common-law rule of non-liability in the exercise of governmental functions. The issue in the principal case was, therefore, solely as to whether the Michigan legislature intended in the adoption of its motor vehicle legislation to subject municipal and public quasi-corporations to responsibility for tortious conduct in the operation of their vehicles. As the law

[11] Ohio G. C. Sec. 6290-2 *et seq.*

[1] Mich. Stat. Ann. (Henderson, 1937) §9. 1431 (definition of "motor vehicle"), 9. 1446 (statutory liability for negligent operation).

was originally enacted in 1915, the legislative intent was, if anything, to broaden the common-law rule of immunity. "The term motor vehicle as used in this act except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except motorcycles operated by policemen and firemen on official business, also all motor vehicles including trucks owned and operated by municipalities." [2] But because another section of this automobile law required that adequate horns be attached to the vehicles of municipalities, an effort was made, in *Wrighton* v. *City of Highland Park*,[3] to imply liability despite the definitional wording. The attempt was unavailing, the Michigan high court declaring that "if the Legislature had intended to change that rule of law, it would not have done so in the uncertain way suggested by counsel." [4] However, by an amendment of 1925 the definition of motor vehicles was altered; "The term 'motor vehicles'," was now to "include all vehicles impelled on public highways of this state by mechanical power except traction engines, road rollers, fire trucks and apparatus owned by any person, firm or private corporation and used for fire protection and moto vehicles owned and operated by the Federal government." [5] *Butler* v. *City of Grand Rapids* [6] ruled against a vigorous effort to find in the amended provision a renunciation of municipal immunity. The court found insufficient evidence of a legislative change of viewpoint, relying heavily upon the principle enunciated in the *Wrighton* case. Yet, six years later, it now repudiates the *Butler* decision and holds the defendant to liability in tort, thus imposing a significant range of new liability upon Michigan cities and other poltical subdivisions.

Despite this basis in the history of the statute for a conclusion that its present wording adequately spells out legislatively imposed liability, the court chose rather to infer statutory alteration of the immunity rule of the common law from a questionable cross-interrelation of motor vehicle statutes, buttressed by a seldom-invoked rule of statutory interpretation. A later section in the Michigan statutory compilation does specifically make "The provisions of this

[2] 1 MICH. COMP. LAWS (1915) §4797.

[3] 236 Mich. 279, 210 N. W. 250 (1926).

[4] *Cf.* Johnson v. Board of County Comm'rs, 253 Mich. 465, 235 N. W. 221 (1931), where a similarly unsuccessful effort was made to find legislative intent to abrogate the common law doctrine.

[5] 1 MICH. COMP. LAWS (1929) §4632.

[6] 273 Mich. 674, 263 N. W. 767 (1935).

act applicable . . . to the drivers of all vehicles owned or operated by this state or any county, city, town . . ." [7] But the act to which reference is made is the uniform motor vehicle act, separate in legislative origins and in purpose from the motor vehicle law; the former concerns manual operation of vehicles, while the latter is concerned with their registration and regulation. To strengthen this tenuous reasoning,[8] the like of which had been so quickly rejected in the earlier *Wrighton* litigation, the present court fell back upon the proposition that the general rule of statutory interpretation which exempts the sovereign unless specifically named, is inapplicable to legislation enacted for "the public good, the advancement of religion and justice, and the prevention of injury and wrong." This exception, although of ancient lineage,[9] has been so little invoked that its scope is shrouded in doubt.[10] Its major use in recent years appears to have been in the wire-tapping case of *Nardone* v. *United States*,[11] where a majority of the Federal Supreme Court held federal officers to be embraced within a Congressional prohibition on the divulging of intercepted communications, because "the sovereign is embraced by general words of a statute intended to prevent injury and wrong."[12] Governmental immunity from tort liability, no less than governmental wire-tapping, involves, to many, "a grave wrong." Yet, historically considered, that immunity, direct derivative that it is from the theory of a king incapable of doing wrong, represents a prerogative of sovereignty quite as much as does state freedom from general statutes of limitation, which the *Nardone* opinion denominates as a "classical instance" of the general rule of exclusion of government where its sovereignty, prerogatives or interests are involved.[13] Nor, seemingly, is the issue any better resolved by reliance upon that portion of the statement of the exception which speaks of laws for "the general

[7] MICH. STAT. ANN. (Henderson, 1937) §9. 1592.

[8] *But see* Note (1942) 136 A. L. R. 582, which includes the statute involved in the principal case in a general annotation of "only those statutes which specifically mention municipal corporations as being liable for the negligent operation of vehicles."

[9] Magdalen College Case, 11 Coke 66b, 77 Eng. Rep. 1235 (1615).

[10] See the discussion in BLACK, INTERPRETATION OF LAWS (2d ed. 1911) §36, which covers as well as any secondary source the general rule of interpretation and its exception.

[11] 302 U. S. 379 (1937).

[12] *Id.* at 384.

[13] Contrast, as to the *Nardone* ruling itself, (1938) 12 ST. JOHN'S L. REV. 352, at 354-55, which finds the exception for prevention of "injury and wrong" satisfied by the long established view of wire-tapping as reprehensible, with (1938) 16 TEX. L. REV. 574, at 575, which, on the basis of representative cases pricking out the line between rule and exception, questions the Court's conclusions in the fact situation before it.

good"; this in part because of the less secure basis for it [14] and in part because its all-inclusiveness would, without external delimitation, swallow up the very rule it is supposed to modify.[15]

The facts of the instant case would more naturally suggest resort to the rule of statutory interpretation which concerns the treatment of state political subdivisions where legislation is inexplicit. Thus, although sovereigns are not restrained by general statutes of limitation, the judicial tendency is to hold the contrary in the case of municipal corporations.[16] A similar trend is discernible with respect to taxing laws [17] and even criminal legislation.[18] Public quasi corporations, like the instant defendant, as distinct from municipal corporations, are ordinarily conceived of as more possessive of elements of sovereignty owing to their involuntary relation to the state. Yet here also there is apparent a tendency to regard them as within legislative intendment unless specifically excluded.[19] Possibly the reason for the Michigan Court's failure to invoke this specific rule of interpretation for political subdivisions is to be found in its earlier determination, in *City of Wyandotte* v. *State Board of Tax Admin.*,[20] that municipal utility sales were not subject to state sales taxation despite a generalized but comprehensive definitional coverage. By falling

[14] No reference is made to such a ground in the generative case of Magdalen College, *supra* note 9. Appearing in *Bacon's Abridgement*, it is requoted in some cases and texts, *e. g.*, United States v. Knight, 14 Pet. 301, 315 (1840), but is avoided by BLACK, *loc. cit. supra* note 10; Nardone v. United States, *supra* note 11.

[15] Note how by the reasoning of the principal case, 297 Mich. at —, 298 N. W. at 108, any exercise of the police power is "for the benefit of the public and the prevention of unrecompensed injury . . ." And surely any taxing act satisfying the public purpose requirement would be equally for "the public good." It is probably the limitless scope of the exception as thus defined that leads MAXWELL, INTERPRETATION OF STATUTES (7th ed. 1929) 121, for greater accuracy to rephrase it to cover all legislation where neither the Sovereign's "prerogative, rights, nor property are in question"; and (1938) 86 U. OF PA. L. REV. 436, to narrow it still further.

[16] The leading case is probably Metropolitan R. R. v. District of Columbia, 132 U. S. 1 (1889). For collection of cases, see Note (1938) 113 A. L. R. 376. A recent case of opposite view is *In re* Erney's Estate, 337 Pa. 542, 12 A. (2d) 333 (1940).

[17] Recent cases are collected in SEASONGOOD, CASES ON MUNICIPAL CORPORATIONS (2d ed. 1941) 26 n.; Note (1937) 111 A. L. R. 185, 205-208.

[18] *Cf.* Union Pacific R. R. v. United States, 313 U. S. 450 (1941) (liability of municipality under Elkins Act).

[19] Covington County v. O'Neal, 239 Ala. 322, 195 So. 234 (1940) (statute of limitation); Emery v. Holt County, 345 Mo. 223, 132 S. W. (2d) 970 (1939) (same); State *ex rel.* Board of Education v. Gibson, 130 Ohio St. 318, 199 N. E. 185 (1935) (same); State v. Woodbury County, 222 Iowa 488, 269 N. W. 449 (1936), and other cases there cited (tax statutes). *Contra:* O'Beery v. Mecklenberg County, 198 N. C. 357, 151 S. E. 880 (1930) (taxing law); Lancaster v. Gray County, 127 S. W. (2d) 385 (Tex. Civ. App. 1939) (laches).

[20] 278 Mich. 47, 270 N. W. 211 (1936).

back on the less pertinent rule of interpretation the court was able to achieve a result which *Matthews* v. *City of Detroit* [21] had, shortly before, indicated was close to its heart, without sacrificing its apparently equally pronounced view on the "well-established rule of exemption of municipal property from general taxation." [22]

J. L. R.

TAXATION

Definition of "Manufacturing" for Differential Valuation Under Ohio Tangible Personalty Tax Law

Taxpayer is engaged in the processing of scrap metal to meet the elaborate specifications of the American Rolling Mill Co., which uses the scrap metal so processed to charge its open hearth furnaces. The processing activity of appellant involves the careful segregation of the various scrap metals acquired, removal of dross, silica, alloy, and paint as required, cutting of the odd scraps into uniform size by mechanical shears, and packing them into compact, uniform bundles with hydraulic presses. Claiming to be a "manufacturer" within the provisions of Ohio General Code Section 5385, the taxpayer listed its personal property in its inventory for taxation at 50% of the true value thereof, as authorized by Section 5388. The tax commissioner, in a determination sustained by the Board of Tax Appeals, denied the classification of a manufacturer and assessed the property at 70% of true value according to the general rule for valuation of personalty. On appeal to the Supreme Court, *held,* reversed; appellant is taxable as a "manufacturer" within the meaning of the code section.[1]

Section 5385, defining a manufacturer to be "A person who purchases, receives, or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining,

[21] 291 Mich. 161, 289 N. W. 115 (1939), carrying to questionable lengths the Michigan doctrine that evidence of "profit" works legal alchemy on a function normally governmental.

[22] City of Wyandotte v. State Board of Tax Admn., *supra* note 20, at 54, 270 N. W. at 213.

[1] Middletown Iron & Steel Co. v. Evatt, Tax Comm., 139 Ohio St. 113, 38 N. E. (2d) 585 (1941).